

No.

05475

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IN THE SUPREME COURT OF THE UNITED STATES

WALTER ALLEN III, *Petitioner*,

v.

JUAN H., *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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**QUESTION PRESENTED**

Whether the federal habeas corpus court substituted its own judgment for that of the state court, in contravention of 28 U.S.C. § 2254(d)(1) and *Jackson v. Virginia*, 443 U.S. 307 (1979), and erroneously engaged in a piecemeal review of the evidence, in holding the state court's finding that Juan H. aided and abetted premeditated murder and attempted murder was based on insufficient evidence of motive, flight, false alibi, and action in concert with the perpetrator.

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**IN THE SUPREME COURT OF THE UNITED STATES**No.  

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**WALTER ALLEN III, *Petitioner*,****v.****JUAN H., *Respondent*.**  

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**PETITION FOR A WRIT OF CERTIORARI**

Walter Allen III, Superintendent, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

**OPINIONS BELOW**

The Ninth Circuit's opinion, as amended is reported at 408 F.3d 1262. App. 1a-25a. The opinion of the United States District Court for the Northern District of California is unreported. *Id.* at 26a-64a. The opinion of the California Court of Appeal, Sixth Appellate District affirming the judgment, its order modifying the opinion and denying rehearing, and the California Supreme Court's order denying review are unreported. *Id.* at 65a-82a.

**STATEMENT OF JURISDICTION**

The opinion of the Ninth Circuit Court of Appeals was filed on June 2, 2005. The court amended the opinion and denied a petition for rehearing and suggestion for rehearing en banc on July 8, 2005. The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1254(1) and Supreme Court Rule 13.3.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part: "nor shall any state deprive any person of life, liberty, or property, without due process of law . . . ."

28 U.S.C. §2254(d)(1) provides: "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim— [¶] resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." Pub. L. No. 104-132, § 104, 110 Stat. 1214.

## STATEMENT

1. An hour and a half after unknown assailants shot at the trailer where respondent Juan H., age 15, lived with his family, the two victims in this case, Sylvester Magdelano and Luis Ramirez, approached the trailer park from across the street. They saw respondent and his adult brother Felix Merendon standing outside. As the victims drew closer, respondent and Merendon suddenly ran out of sight inside the park. Neither had anything in his hands at the time. After Magdelano and Ramirez passed the family's trailer, respondent and Merendon jumped out from behind a parked vehicle. Respondent stood next to and slightly behind Merendon. Merendon asked Ramirez and Magdelano if they were the ones who "shot up his pad." Ramirez replied, "What are you talking about?" Merendon then lifted a double-barreled shotgun from his side and fired at Ramirez, killing him. Magdelano turned and ran, then heard a second shot. App. at 66a-67a.

After the second shot, respondent and Merendon fled toward their trailer together. Merendon ran to his car and drove away. Respondent ran to his family's trailer. When the police arrived,

respondent and his family were in a van attempting to back out of their driveway. They were surrounded by a large crowd of angry people. App. at 67a.

Detective Gunter interviewed respondent in his trailer right afterward. Respondent said he was inside his trailer when the shooting occurred. He gave the same statement at the police station the following day after waiving his rights. App. at 67a, 78a.

Magdelano had had trouble with respondent before. Respondent's family associated with the Sureños gang, while Magdelano and many of the other park residents associated with the rival Norteños. Respondent had thrown gang signs at Magdelano before and stared him down. A couple of weeks before the shooting, Magdelano had approached respondent, told him to stop throwing gang signs at him, and punched him in the face, knocking him to the ground. Magdelano, Ramirez, and two other friends later told respondent's father and Merendon that they did not want any problems with them. App. at 66a.

2. In 1999, following a contested hearing, the Juvenile Court for the County of Monterey, California, found that respondent committed premeditated murder and premeditated attempted murder, and that respondent knew another principal was armed with a firearm. Respondent was committed to the California Youth Authority.

3. Respondent appealed, claiming, *inter alia*, that the evidence was insufficient to support the judgment. The California Court of Appeals affirmed. It found that substantial evidence supported the judgment based on four factors: respondent's motive, action in concert with the shooter, false alibi, and flight. The court explained that respondent had a motive to commit the offenses because Magdelano had punched him in the face and knocked him down after respondent had thrown gang signs at him, and because on the night of the shooting, respondent's brother Merendon suspected the victims had shot at their family's trailer. App. at 70a. Respondent also